

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 27 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

B.N. BUILDERS

Versus

UNION OF INDIA

Appearance:

MR GT DAYANI for Petitioner

MR JAYANT PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR

Date of decision: 05/11/1999

ORAL JUDGEMENT

In this petition, both the parties agree that Mr. B. Somasekhar Rao, Chief Engineer (Retd.) Department of Space, be appointed as arbitrator.

In the facts and circumstances of the case, Mr. B. Somasekhar Rao, Chief Engineer (Retd.) Department of

Space, No.MF 2/26, B.D.A. Flats, New Thippasandra P.O.Bangalore 560 075 is appointed as arbitrator. He will declare his award as early as possible..

Learned counsel for the petitioner states that relevant arbitration clause 16 is very widely worded and the authorities have no power or jurisdiction to refuse to refer any item to arbitrator. The said clause reads as under:

"All disputes arising out of agreement for this work shall be referred to the sole arbitration of a person to be appointed by the Chief Engineer, CED, DOS Bangalore within 30 days from the date of such a request and shall be settled by arbitration as provided under the Indian Arbitration Act, 1940 and the rules made thereunder. The award of the arbitrator shall be binding on all the parties."

In my opinion, the submission is well founded. Looking to the relevant clause, it is clear that the authorities have no power to refuse any dispute to arbitrator. At the same time, however, when a contention is raised that certain disputes do not fall under the agreement, the said question can be decided by the arbitrator. It is, therefore, clarified that the arbitrator will decide that question including arbitrability of disputes.

It is also stated that a suit is filed by the plaintiff in the Court of Civil Judge (S.D.) Ahmedabad (Rural) being Special Civil Suit No. 74 of 1994. Learned counsel for the petitioner states that the petitioner will withdraw the said suit within one month from today. It is also stated at the Bar that Civil Revision Application No. 1367 of 1996 arising from the said proceedings is also pending in this Court. That CRA obviously would not survive in view of withdrawal of main matter i.e. Special Civil Suit No.74 of 1994. The question regarding applicability of Arbitration Act, 1940 or Arbitration and Conciliation Act, 1996 is also left open.

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